

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6058 OF 2023

**VAIJNATH GANPATRAO DEVSHETTE AND OTHERS
VERSUS
VIMALBAI DIGAMBAR BIRADAR AND OTHERS**

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Advocate for Petitioners : Mr. Anand Chawre
None for the Respondents

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 04th AUGUST, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 27/03/2023, passed by learned Ad-hoc District Judge-1, Udgir, District Latur, below Exhibit-5 in Regular Civil Appeal No.39/2022, thereby rejecting application filed by the petitioners seeking stay to the judgment and decree passed by the Trial Court in Regular Civil Suit No.385/2016.

2. Regular Civil Suit No.385/2016, filed by respondent No.1 for partition of suit properties bearing Survey Nos.53/1, 37/5, 38/1 and 51/1 at Belsangavi, Taluka Jalkot, District Latur, was decreed by the Trial Court vide judgment and decree dated 01/10/2022. Petitioners challenged the said judgment and decree by filing R.C.A. No.39/2022. Along with the appeal, application Exhibit-5 seeking stay to the impugned judgment and decree is

filed. Initially interim stay was granted by the appellate Court vide order dated 15/12/2022. However, after appearance of the parties the interim stay is vacated. Hence, the present petition.

3. Heard learned advocate for petitioners. Though duly served, none appears for respondents. Perused the writ petition memo, annexures thereto and the impugned judgment and order.

4. There appears substance in the argument of learned advocate for petitioners that from the admissions given by plaintiff's witness No.3 namely Rajpal Annarao Devshette, who according to learned advocate for petitioners is cousin of the plaintiff and defendants, it appears that in the year 1986, suit properties were partitioned and accordingly mutation entries were effected. He also admitted that land in Survey No.73/5, admeasuring 5 Acre 5 Gunthas, was given to the share of defendant No.3/petitioner No.3 and land in Survey No.51/1, admeasuring 4 Acre 22 Gunthas, was given to the share of defendant No.1/petitioner No.1. He has further admitted that after partition in the year 1986, land Survey Nos.53 and 38 stood in the name of Ganpati (father of plaintiffs and defendants).

5. In view of the above, petitioners have good case on merit and therefore, they have made out the case for stay to the impugned judgment and decree passed by the Trial Court, to the extent of lands which have fallen to their share.

6. In the result, writ petition is partly allowed. It is hereby ordered that there shall be ad-interim stay to the judgment and decree dated 01/10/2022, passed by the Trial Court in R.C.S. No.385/2016, to the extent of partition of land Survey Nos.73/5 and 51/1, till final decision of the appeal. Hearing of the appeal is expedited.

(NITIN B. SURYAWANSHI, J.)